

Having reviewed the whole evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

Claimant, an inmate in the Kansas Department of Corrections, was employed by respondent, a screen print and embroidery company which operated within the Lansing Correctional Facility in Lansing, Kansas. Approximately 80 percent of respondent's employees are inmates employed through a federal program. Claimant was employed as a stock clerk order filler. His primary responsibility required him to get thread from the thread room for use by respondent's other employees.

The thread room ceiling is approximately eight foot high and the thread was kept on rows of wooden shelves with the highest stack at about seven and one-half feet. The claimant agreed that the ceiling could be reached without the aide of a ladder.

Claimant testified that on July 16, 2008, he was standing on the top of a three foot ladder rearranging threads. The ladder slipped as he was turning and he fell to the floor. Claimant testified that he was knocked out. When discovered on the floor, claimant was taken to the infirmary. At the infirmary, claimant reported that he became lightheaded and blacked out before he fell.<sup>1</sup> The medical report further noted there is a fairly low ceiling in the room where claimant fell and a nurse was able to touch the ceiling without using a ladder. Claimant complained of right shoulder and neck pain. He received medical treatment at the correctional facility which consisted of x-rays, a neck brace and pain medication.

On the day claimant was to be released from the infirmary he requested to be moved to protective custody because he feared that if returned to the general population in the medium security facility he would be harmed by other inmates. Claimant's request was honored and ultimately he was transferred from Lansing to the El Dorado Correctional Facility.

Scott R. Skinner, respondent's vice president of operations, testified that claimant requested to be placed into protective custody which made him ineligible to continue working for respondent. Mr. Skinner was also told through Lansing's Interrogation and Investigation department that claimant was most likely assaulted in the thread room due to a tobacco debt. On cross-examination, Mr. Skinner testified that any person claimant would have had contact with in the thread room would have been respondent's employee.

A claimant in a workers compensation proceeding has the burden of proof to establish by a preponderance of the credible evidence the right to an award of compensation and to prove the various conditions on which his or her right depends.<sup>2</sup> A

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<sup>1</sup> P.H. Trans., Cl. Ex. 1.

<sup>2</sup> K.S.A. 2008 Supp. 44-501(a); *Perez v. IBP, Inc.*, 16 Kan. App. 2d 277, 826 P.2d 520 (1991).

claimant must establish that his personal injury was caused by an “accident arising out of and in the course of employment.”<sup>3</sup> The phrase “arising out of” employment requires some causal connection between the injury and the employment.<sup>4</sup>

There are several versions regarding the cause of claimant’s fall. When claimant received treatment he indicated that he blacked out and fell from the ladder. When he testified he stated he was on the top rung of a three foot ladder which wobbled as he turned and caused him to fall. Lastly, there is the allegation that he was assaulted by a fellow inmate or inmates due to a dispute over a debt for tobacco.

Perhaps the most damaging evidence regarding the alleged fall from the ladder is claimant’s own admission that he could touch the ceiling in the thread room without the aide of a ladder. It is unclear why claimant, who is 6’2” tall, would need to be standing on the top rung of a three foot ladder in order to reach the thread. And the timing of claimant’s request to be segregated from the general population after his accident certainly corroborates the allegation that he was assaulted rather than suffered an accidental fall. This Board Member, based upon the entire evidentiary record, does not find claimant’s allegation of a fall from a ladder to be credible. Consequently, claimant has failed to sustain his burden of proof that he suffered accidental injury arising out of his employment.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.<sup>5</sup> Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2008 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.<sup>6</sup>

**WHEREFORE**, it is the finding of this Board Member that the Order of Administrative Law Judge John D. Clark dated May 20, 2009, is affirmed.

**IT IS SO ORDERED.**

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<sup>3</sup> K.S.A. 2008 Supp. 44-501(a).

<sup>4</sup> *Pinkston v. Rice Motor Co.*, 180 Kan. 295, 303 P.2d 197 (1956).

<sup>5</sup> K.S.A. 44-534a.

<sup>6</sup> K.S.A. 2008 Supp. 44-555c(k).

Dated this 28th day of August 2009.

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DAVID A. SHUFELT  
BOARD MEMBER

c: Joseph Seiwert, Attorney for Claimant  
Sylvia B. Penner, Attorney for Respondent and its Insurance Carrier  
John D. Clark, Administrative Law Judge